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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/763,609 | 01/23/2004 | Eric Downey | ED-2004 | 7268 |
| 7590 | 06/16/2005 | | EXAMINER | |
| Thomas J. Schab Law Office of Thomas J. Schab 247 Ruth St. Calumet City, IL 60409 | | | CONLEY, FREDRICK C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3673 | |

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/763,609

Applicant(s)

DOWNEY, ERIC

Examiner

FREDRICK C CONLEY

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3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>01/23/04</u> . | 6) <input type="checkbox"/> Other: ____ |

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over G.B. Pat. No. 772,025 to Hicks in view of U.S. Pat No. 3,818,521 to Richards.

1, Hicks discloses a conventional bedding mattress, comprising;

an inner core 1 comprising a plurality of identical, interconnected coil springs 7 each having a top and a bottom end, which when interconnected together, form a unitary top, bottom and sides of said mattress;

an unsecured padding layer 15 where in said unsecured padding layer permits individual movement of the top ends of the coil springs relative to each other to the degree of the Applicant's invention and wherein said padding layer is made from a cotton felt (col. 2 lines 69-70) which is inherently translucent; and

a covering for enclosing said padding layer and said core of springs, said covering

comprised of a lower panel 18 and a top panel 17, wherein said top panel is a clear vinyl material and said lower panel is a fabric, said covering being translucent (col. 2 lines 80-84). Hicks fails to disclose a translucent layer 17 of elastomeric netting superimposed over said top end of said inner core. Richards discloses a mattress having a layer of flexible netting 16" that is inherently translucent superimposed over a

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top end of an inner core of a mattress (fig. 9). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a flexible netting as taught by Richards in order to interconnect the upper ends of the springs of Hicks. It is considered an obvious modification to merely select a material based on its use and the Examiner takes Official Notice that it would have been obvious for having ordinary skill in the art to select an elastomeric material for its flexibility. With regards to the bottom panel of the Applicant's invention being translucent and the top panel fabric it is well known in the art to flip mattresses over to extend the life and thus the bottom panel of Hicks would have a translucent panel and the top panel would have a fabric material after the mattress has been flipped over to the other side.

Claim 2, wherein said top part of said covering is enveloped about said top and sides of said core and said bottom part is disposed over said bottom side of said core.

Claim 3, Hicks fails to disclose the top part of the covering comprised of three component layers. Richards wherein said top part of said covering is comprised of three component layers, said outermost component layer is a fabric material 13, said intermediate component layer is a second padding layer 17A of the same material as a unsecured padding layer 17B and said bottom component layer is a ticking material 16', such as mesh. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a three component layer as taught by Richards in order to provide a padded cover for the mattress of Hicks.

Claim 4, wherein said netting layer 16 include a plurality of spaced tabs defined from two mutually adjacent edge portions 30 along the top wall, bottom wall,

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and side wall for securing the netting to said core (fig. 6)(col. 3 lines 64-67)(col. 4 lines 13-17).

Claim 7, wherein said coil springs of said core are interconnected by securing elements (5,6) attached to adjacent springs (Hicks).

Claim 8, Hicks discloses a method of constructing a conventional bedding mattress having illumination properties, comprising the steps of:

providing a core 1 of interconnected coil springs 7, wherein said core has a top, a bottom, and

placing an padding layer 15 comprised of an inherently translucent material, such as cotton;

enveloping a covering (17,18) about said core and padding layer, wherein said covering 17 is translucent. Hicks fails to disclose securing a netting layer on top of said core. Richards discloses a mattress having a layer of netting 16" secured on a top of a core of a mattress (fig. 9). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ netting as taught by Richards in order to interconnect the upper ends of the springs of Hicks.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over G.B. Pat. No. 772,025 to Hicks, U.S. Pat No. 3,818,521 to Richards, and further in view of U.S. Pat. No. 4,788,731 to Yokoi et al.

Hicks, as modified, discloses all of the Applicant's claimed limitations except for the intermediate component layer comprised of polyester. Yokoi discloses a mattress having a cover with an intermediate component layer 15 comprised of polyester. It

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would have been obvious for one having ordinary skill in the art at the time of the invention to employ a polyester material as taught by Yokoi in order to provide a plastic padding material for the mattress of Hicks.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



ALISON PICKARD
PRIMARY EXAMINER